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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,625	10/23/2003	Michel Therin	1600-25 (BR040489)	5931
Peter DeLuca Carter, DeLuca, Farrell & Schmidt, LLP 445 Broad Hollow Road, Suite 420 Melville, NY 11747			EXAMINER TYSON, MELANIE RUANO	
			ART UNIT 3773	PAPER NUMBER
			MAIL DATE 05/24/2011	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

***Advisory Action
Before the Filing of an Appeal Brief***

Application No.

10/690,625

Applicant(s)

THERIN ET AL.

Examiner

MELANIE TYSON

Art Unit

3773

—THE MAILING DATE of this communication appears on the cover sheet with the correspondence address —

THE REPLY FILED 11 May 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
 Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
 (b) ☐ They raise the issue of new matter (see NOTE below);
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 (d) ☐ They present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
 5. ☐ Applicant's reply has overcome the following rejection(s): _____.
 6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
 The status of the claim(s) is (or will be) as follows:
 Claim(s) allowed: _____.
 Claim(s) objected to: _____.
 Claim(s) rejected: _____.
 Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
the applicant's arguments are not persuasive. The applicant first argues that Scetbon fails to disclose the tape includes a protected zone and/or non-protected zone since Scetbon fails to disclose that the film occludes the microporous structure. However, Schmitt teaches occluding the microporous structure with a film and thus this argument is moot. The applicant then argues the combined references teach away from each other. Specifically, that Schmitt teaches away from using a monofilament to form the mesh and positioning a film to cover only a portion of the mesh. It is first noted that Schmitt has not been modified with monofilaments to form the mesh and thus this argument is moot. Secondly, an illustrated embodiment showing/describing the entire mesh being covered by the film does not show a teaching away from an embodiment in which the mesh may be partially covered. Nowhere does Schmitt disclose that the invention will not work if only partially covered with the film. The applicant further argues the combined references fail to disclose or suggest all the limitations recited. Specifically, Schmitt fails to disclose a non-protected zone wherein the microporous texture of the support is not occluded, a macroporous texture that is occluded, and further that Plouhar and Scetbon fail to remedy this deficiency. Regarding the first argument, it is the examiner's position that the claims do not require this limitation. The claims simply require the microporous texture and a portion of the macroporous texture be occluded in the protected zone, wherein a second portion of the macroporous texture is not occluded in the protected zone. However, nowhere do the claims require the microporous structure not be occluded in the nonprotected zone as argued. Regarding the second argument, Plouhar does remedy this deficiency in Schmitt (see final rejection for details and further page 12 of applicant's arguments that states Plouhar discloses the macroporous texture may be occluded). Therefore, it is the examiner's position that the combination of references discloses or suggests all the limitations as recited in the claims.

12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____

13. ☐ Other: _____

/Melanie Tyson/
Primary Examiner, Art Unit 3773